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TRANSMITTAL FORM

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Total Number of Pages in This Submission: 53

Application Number	10/016,792
Filing Date	11/02/2001
First Named Inventor	David Challener
Art Unit	2137
Examiner Name	Michael J. Pyzocha
Attorney Docket Number	RPS920010134US1

ENCLOSURES *(Check all that apply)*

- [x] Fee Transmittal Form
  - [ ] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [x] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) (please Identify below):
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Winstead Sechrest & Minick P.C.		
Signature			
Printed name	Robert A. Voigt, Jr.		
Date	01/03/2006	Reg. No.	47,159

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Signature	Toni Stanley		
Typed or printed name	Toni Stanley	Date	01/03/2006

PTO/SB/17 (11-04)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Effective on 10/01/2004. Patent fees are subject to annual revision.

FEE TRANSMITTAL
For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) **500.00**

Complete if Known	
Application Number	10/016,792
Filing Date	11/02/2001
First Named Inventor	David Challener
Examiner Name	Michael J. Pyzocha
Art Unit	2137
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METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order

☑ Deposit Account ☐ None

Deposit Account Number: 50-0563

Deposit Account Name: IBM Corporation

The Director is hereby authorized to: (check all that apply)

☑ Charge fee(s) indicated below

☐ Charge fee(s) indicated below, **except for the filing fee**

☑ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17

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FEE CALCULATION

1. BASIC FILING FEE

Fee Description	Fee ($)	Small Entity Fee ($)	Fee Paid($)
Utility Filing Fee	790	395	
Design Filing Fee	350	175	
Plant Filing Fee	550	275	
Reissue Filing Fee	790	395	
Provisional Filing Fee	160	80	

Subtotal (1) $ _____

FEE CALCULATION (continued)

2. EXTRA CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20	50	25
Each independent claim over 3	200	100
Multiple dependent claims	360	180
For Reissues, each claim over 20 and more than in the original patent	50	25
For Reissues, each independent claim more than in the original patent	200	100

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 36 or HP =	_____	x _____	= _____

HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 3 or HP =	_____	x ___	= _____

HP = highest number of independent claims paid for, if greater than 3

Multiple Dependent Claims	Fee ($)	Fee Paid ($)
	_____	_____

Subtotal (2) $ _____

3. OTHER FEES

Fee Description	Fee ($)	Small Entity Fee ($)	Fee Paid($)
1-month extension of time	120	60	
2-month extension of time	450	225	
3-month extension of time	1,020	510	
4-month extension of time	1,590	795	
5-month extension of time	2,160	1,080	
Information disclosure stmt. fee	180	180	
37 CFR 1.17(q) processing fee	50	50	
Non-English specification	130	130	
Notice of Appeal	500	250	
Filing a brief in support of appeal	500	250	500
Request for oral hearing	1,000	500	
Other: _____			

Subtotal (3) $ 500

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 47.159	Telephone 512.370.2832
Name (Print/Type)	Robert A. Voigt, Jr.		Date 01/03/2006

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Challener et al.	Before the Examiner: Pyzocha, Michael J.
Serial No.: 10/016,792	Group Art Unit: 2137
Filing Date: November 2, 2001	
Title: TRANSMITTING A BROADCAST VIA THE INTERNET WITHIN A LIMITED DISTRIBUTION BASE OF LISTENERS	IBM Corporation P.O. Box 12195 Dept. 9CCA, Bldg. 002-2 Research Triangle Park, NC 27709

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines, Inc., which is the assignee of the entire right, title and interest in the above-identified patent application.

CERTIFICATION UNDER 37 C.F.R. §1.8

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01/06/2006 BABRAHA1 00000005 500563 10016792
01 FC:1402 500.00 DA

Signature

Toni Stanley
(Printed name of person certifying)

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-24 are pending in the Application. Claims 1-24 stand rejected. Claims 1-24 are appealed.

IV. STATUS OF AMENDMENTS

Appellants have not submitted any amendments following receipt of the final rejection with a mailing date of October 3, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment of the present invention, a method for transmitting a broadcast over the Internet by a broadcaster, where the broadcast is interpreted by users located approximately within a defined distribution area of the broadcaster, may comprise the step of encoding a radio broadcast into digital packets of information. Specification, page 12, line 16 – page 13, line 28; Figure 5, step 501. The method may further comprise encrypting the digital packets of information. Specification, page 14, lines 1-11; Figure 5, step 502. The method may further comprise transmitting the encrypted digital packets of information over the Internet. Specification, page 14, lines 12-13; Figure 5, step 503. The method may further comprise providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. Specification, page 14, lines 14-24; Figure 5, step 504.

In another embodiment of the present invention, a computer program product embodied in a machine readable medium for transmitting a broadcast over the

Internet by a broadcaster where the broadcast is interpreted by users located approximately within a defined distribution area of the broadcaster may comprise the step of encoding a radio broadcast into digital packets of information. Specification, page 10, line 21 – page 12, line 12; Specification, page 12, line 16 – page 13, line 28; Figure 4, elements 420, 440; Figure 5, step 501. The computer program product may further comprise encrypting the digital packets of information. Specification, page 10, line 21 – page 12, line 12; Specification, page 14, lines 1-11; Figure 4, elements 420, 440; Figure 5, step 502. The computer program product may further comprise transmitting the encrypted digital packets of information over the Internet. Specification, page 10, line 21 – page 12, line 12; Specification, page 14, lines 12-13; Figure 4, elements 420, 440; Figure 5, step 503. The computer program product may further comprise providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. Specification, page 10, line 21 – page 12, line 12; Specification, page 14, lines 14-24; Figure 4, elements 420, 440; Figure 5, step 504.

In another embodiment of the present invention, a system comprises a server broadcaster configured to transmit a broadcast over the Internet. Specification, page 7, lines 3-20; Figure 1, element 110. The server broadcaster may comprise a processor. Specification, page 10, line 21 – page 12, line 12; Figure 4, element 410. The server broadcaster may further comprise a memory unit coupled to the processor, where the memory unit is operable for storing a computer program operable for transmitting a broadcast over the Internet, where the broadcast is interpreted by users located approximately within a defined distribution area of the server broadcaster. Specification, page 10, line 21 – page 12, line 12; Figure 4, elements 414, 420, 440. The computer program is operable for performing the programming step of encoding a radio broadcast into digital packets of information. Specification, page 10, line 21 – page 12, line 12; Specification, page 12, line 16 – page 13, line 28; Figure 4, elements 420, 440; Figure 5, step 501. The computer program is further operable for performing the programming step of encrypting the digital packets of information.

Specification, page 10, line 21 – page 12, line 12; Specification, page 14, lines 1-11; Figure 4, elements 420, 440; Figure 5, step 502. The computer program is further operable for performing the programming step of transmitting the encrypted digital packets of information over the Internet. Specification, page 10, line 21 – page 12, line 12; Specification, page 14, lines 12-13; Figure 4, elements 420, 440; Figure 5, step 503. The computer program is further operable for performing the programming step of providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. Specification, page 10, line 21 – page 12, line 12; Specification, page 14, lines 14-24; Figure 4, elements 420, 440; Figure 5, step 504.

In another embodiment of the present invention, a method for transmitting a broadcast over the Internet within a defined distribution area may comprise the step of receiving a request to transmit the broadcast from a requester. Specification, page 16, line 9 – page 17, line 2; Figure 6, step 601. The method may further comprise determining an approximate physical location of the requester. Specification, page 17, lines 3-4; Figure 6, step 602. The method may further comprise transmitting the broadcast over the Internet to the requester if the requester is physically located approximately within the defined distribution area. Specification, page 17, line 24 – page 18, line 2; Figure 6, step 604.

In another embodiment of the present invention, a computer program product embodied in a machine readable medium for transmitting a broadcast over the Internet within a defined distribution area comprise the programming step of receiving a request to transmit the broadcast from a requester. Specification, page 10, line 21 – page 12, line 12; Specification, page 16, line 9 – page 17, line 2; Figure 4, elements 420, 440; Figure 6, step 601. The computer program product may further comprise the programming step of determining an approximate physical location of the requester. Specification, page 10, line 21 – page 12, line 12; Specification, page 17, lines 3-4; Figure 4, elements 420, 440; Figure 6, step 602. The computer program

product may further comprise the programming step of transmitting the broadcast over the Internet to the requester if the requester is physically located approximately within the defined distribution area. Specification, page 10, line 21 – page 12, line 12; Specification, page 17, line 24 – page 18, line 2; Figure 4, elements 420, 440; Figure 6, step 604.

In another embodiment of the present invention, a system may comprise a processor. Specification, page 10, line 21 – page 12, line 12; Figure 4, element 410. The system may further comprise a memory unit coupled to the processor, where the memory unit is operable for storing a computer program operable for transmitting a broadcast over the Internet within a defined distribution area. Specification, page 10, line 21 – page 12, line 12; Figure 4, elements 414, 420, 440. The computer program is operable for performing the programming step of receiving a request to transmit the broadcast from a requester. Specification, page 10, line 21 – page 12, line 12; Specification, page 16, line 9 – page 17, line 2; Figure 4, elements 420, 440; Figure 6, step 601. The computer program product may further be operable for performing the programming step of determining an approximate physical location of the requester. Specification, page 10, line 21 – page 12, line 12; Specification, page 17, lines 3-4; Figure 4, elements 420, 440; Figure 6, step 602. The computer program product may further be operable for performing the programming step of transmitting the broadcast over the Internet to the requester if the requester is physically located approximately within the defined distribution area. Specification, page 10, line 21 – page 12, line 12; Specification, page 17, line 24 – page 18, line 2; Figure 4, elements 420, 440; Figure 6, step 604.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-4, 6-9, 11-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo et al. (U.S. Patent No. 6,434,621) (hereinafter "Pezzillo") in view of Glick et al. (U.S. Publication No. 20020051540 (hereinafter "Glick") and

in further view of Schneier (*Applied Cryptography*). Claims 5, 10 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and Schneier and in further view of Kelly et al. (U.S. Publication No. 20030050015) (hereinafter "Kelly"). Claims 16, 18-19, 21-22 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick. Claims 17, 20 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and in further view of Schlossberg et al. (U.S. Publication No. 20020066034) (hereinafter "Schlossberg"). Claims 1-16, 18-19, 21-22 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over iCraveTV (CNN Story) (hereinafter "CNN") in view of Schneier. Claims 17, 20 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over CNN in view of Schneier and in further view of Schlossberg.

VII. ARGUMENT

A. Claims 1-4, 6-9 and 11-14 are improperly rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and in further view of Schneier.

The Examiner has rejected claims 1-4, 6-9 and 11-14 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo et al. (U.S. Patent No. 6,434,621) (hereinafter "Pezzillo") in view of Glick et al. (U.S. Publication No. 20020051540) (hereinafter "Glick") and in further view of Schneier (*Applied Cryptography*). Paper No. 5, page 2. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Claims 1, 6 and 11 are patentable over Pezzillo in view of Glick and in further view of Schneier.

Appellants respectfully assert that Pezzillo, Glick and Schneier, taken singly or in combination, do not teach or suggest "providing a decryption key to a transmitter to be broadcasted within said defined distribution area of said broadcaster" as recited in claim 1 and similarly in claims 6 and 11. The Examiner cites column 5,

lines 60-67 of Pezzillo as teaching transmitting digital packets of information over the Internet. Paper No. 5, page 2. The Examiner further cites paragraph 119 of Glick as teaching encrypting packets to restrict access to a defined distribution area. Paper No. 5, page 3. The Examiner further cites page 523 of Schneier as teaching broadcasting a key. Paper No. 5, page 3. Appellants respectfully traverse that the combination of these references teaches the above-cited claim limitation.

Pezzillo instead teaches that a webcaster is simulcasting the signal of a radio station that has certain restrictions on which programming is allowed to carry on the Internet, a time barrier followed by pre-recorded programming from the Contents Database can create the required Internet blackout. Column 5, lines 61-65. Hence, Pezzillo teaches simulcasting a signal of a radio station over the Internet.

Glick instead teaches that location identity based encryption takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. Glick further teaches that there are two pieces of requisite information for constructing the symmetric decryption, including: a) the playback location known to the playback device, and b) the shape-parm pattern that is included with the encrypted digital information. [0119]. Glick further teaches that neither piece of information alone is sufficient to construct a decryption key. [0119]. Glick further teaches that the encryption is specific to a geographic area and the encryption algorithm need not know anything about the user or device on which the decryption will occur. [0119]. Glick further teaches that in the present invention, however, there is no key distribution problem. [0085]. Glick further teaches that the encryption/decryption key can be constructed only from locationless information contained with the digital information, and the player location for the appliance. [0085]. Glick further teaches that only an appliance located within the proximate area defined by the location identity attribute when the file was encrypted can view or playback the digital information. [0085]. Hence, Glick teaches a different approach to cryptographic methods by not distributing or

sharing cryptographic keys. Glick further teaches that this different approach does not involve specifically distributing a decryption key but is constructed from locationless information contained with the digital information and the player location for the appliance (see paragraph 0085).

Schneier instead teaches broadcasting an encrypted message. Page 523.

None of these references, taken singly or in combination, teach providing a decryption key to a transmitter. Glick teaches away from specifically transmitting a decryption key but instead teaches that a decryption key is constructed from locationless information contained with the digital information and the player location for the appliance. Further, Schneier is silent regarding providing a decryption key to a transmitter. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Neither do any of these references, taken singly or in combination, teach providing a decryption key to a transmitter to be broadcasted within a defined distribution area of the broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

In response to Appellants' above argument, the Examiner asserts that Pezzillo teaches transmitting information to clients who receive the data and Schneier teaches broadcasting a key. Paper No. 5, page 10. The Examiner then concludes that Pezzillo and Schneier, taken in combination, teach providing a decryption key to a transmitter. Paper No. 5, page 10. However, the Examiner admits that neither reference teaches broadcasting a decryption key. Neither has the Examiner shown that either of these references teaches providing a decryption key to a transmitter.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

2. Claims 2-4, 7-9 and 12-14 are patentable over Pezzillo in view of Glick and in further view of Schneier for at the reasons stated in Section A.1.

Claims 2-4 depend from claim 1 and hence are patentable over Pezzillo in view of Glick and in further view of Schneier for at least the reasons that claim 1 is patentable over Pezzillo in view of Glick and in further view of Schneier as discussed in Section A.1. Claims 7-9 depend from claim 6 and hence are patentable over Pezzillo in view of Glick and in further view of Schneier for at least the reasons that claim 6 is patentable over Pezzillo in view of Glick and in further view of Schneier as discussed in Section A.1. Claims 12-14 depend from claim 11 and hence are patentable over Pezzillo in view of Glick and in further view of Schneier for at least the reasons that claim 11 is patentable over Pezzillo in view of Glick and in further view of Schneier as discussed in Section A.1.

3. Claims 2, 7 and 12 are patentable over Pezzillo in view of Glick and in further view of Schneier.

Appellants respectfully assert that Pezzillo in view of Glick and in further view of Schneier, taken singly or in combination, do not teach or suggest "receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster" as recited in claim 2 and similarly in claims 7 and 12. The Examiner cites page 523 of Schneier and Glick as teaching the above-cited claim limitation. Paper No. 5, page 3. Appellants respectfully traverse.

Schneier instead teaches broadcasting an encrypted message. Page 523. Glick instead teaches transmitting encrypted digital information that includes a shape

parameter that is used in conjunction with the appliance location to decrypt the encrypted digital information by the appliance. [0017].

There is no language in either Schneier or Glick (taken singly or in combination) that teaches receiving a decryption key by users of computer systems. Neither is there any language in either Schneier or Glick (taken singly or in combination) that teaches receiving a decryption key by users of computer systems located approximately within a defined distribution area. Neither is there any language in either Schneier or Glick (taken singly or in combination) that teaches receiving a decryption key by users of computer systems located approximately within a defined distribution area of a broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 7 and 12, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

4. Claims 4, 9 and 14 are patentable over Pezzillo in view of Glick and in further view of Schneier.

Appellants respectfully assert that Pezzillo in view of Glick and in further view of Schneier, taken singly or in combination, do not teach or suggest "reproducing said decrypted digital broadcast by an audio transducer" as recited in claim 4 and similarly in claims 9 and 14. The Examiner takes Official Notice that it would have been obvious to a person of ordinary skill in the art to use an audio transducer to reproduce the digital broadcast. Paper No. 5, page 4. The Examiner's motivation is to allow the receiver to hear the digital broadcast. Paper No. 5, page 4.

Appellants respectfully traverse the implied assertion that it would have been obvious to one of ordinary skill in the art to modify Pezzillo in view of Glick and in further view of Schneier to reproduce a decrypted digital broadcast by an audio transducer. Appellants respectfully request the Examiner to provide a reference that teaches reproducing a decrypted digital broadcast by an audio transducer pursuant to M.P.E.P. §2144.03. Furthermore, the Examiner is reminded that in order to establish

a *prima facie* case of obviousness the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner states "to allow the receiver to hear the digital broadcast" as motivation. However, the Examiner has not provided any evidence that his motivation comes from any of the sources listed above. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 4, 9 and 14. *Id.*

In response to Appellants' request to the Examiner to provide a reference that teaches reproducing a decrypted digital broadcast by an audio transducer, the Examiner has provided a reference that teaches a transducer. Paper No. 5, page 10. However, a transducer does not show reproducing a decrypted digital broadcast by an audio transducer. Appellants were contesting that it is well known in the art to reproduce a decrypted digital broadcast by an audio transducer. Appellants were not contesting that an audio transducer is well known in the art. Accordingly, claims 4, 9 and 14 are patentable over Pezzillo in view of Glick and in further view of Schneier. M.P.E.P. §2143.

5. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo with Glick and Schneier.

Most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found

in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Pezzillo does not teach encrypting digital packets of information, as recited in claim 1 and similarly in claims 6 and 11. Paper No. 5, page 3. Further, the Examiner admits that Pezzillo does not teach transmitting encrypted digital packets of information over the Internet, as recited in claim 1 and similarly in claims 6 and 11. Paper No. 5, page 3. Further, the Examiner admits that Pezzillo does not teach providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster, as recited in claim 1 and similarly in claims 6 and 11. Paper No. 5, page 3. The Examiner identifies paragraph 119, of the reference Glick, as teaching encrypting packets to restrict access to a defined distribution area and identifies page 523, of the reference Schneier, as teaching broadcasting a key. Paper No. 5, page 3. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 5, page 3. The Examiner's motivation for combining these references is that it "would have been to allow anyone in a defined geographic area to decrypt the information (see paragraph 119) and to share the decryption key with the users (see

page 523)". Paper No. 5, page 3. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner appears to be asserting that the motivation is found in the references themselves, namely page 119 of Glick and page 523 of Schneier. If the Examiner is asserting that the motivation comes from either the knowledge of one of ordinary skill in the art or from the nature of the problem to be solved1, then Appellants respectfully request the Examiner to specify as such.

The Examiner cites paragraph 119 of Glick as support for his motivation which teaches that location identity based encryption takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. Glick further teaches that there are two pieces of requisite information for constructing the symmetric decryption, including: a) the playback location known to the playback device, and b) the shape-parm pattern that is included with the encrypted digital information. [0119]. Glick further teaches that neither piece of information alone is sufficient to construct a decryption key. [0119]. Glick further teaches that the encryption is specific to a geographic area and the encryption algorithm need not know anything about the user or device on which the decryption will occur. [0119]. Hence, Glick teaches a different approach to

1 Pezzillo addresses the problem of automatically controlling advertising inserts and associate ads with particular shows or program schedule rules (column 2, lines 58-60). Glick addresses the problem of providing a way to control the interchange of digital information and prevents unauthorized copying of copyright-protected content (paragraph 0015). Schneier does not specifically address a problem to be solved, rather, Schneier discusses conference key distribution and secret broadcasting (page 523). Hence, the nature of the problem to be solved by each of these references do not provide any motivation for modifying Pezzillo to incorporate the above-cited claim limitations.

cryptographic methods by not distributing or sharing cryptographic keys. Glick further teaches that this different approach does not involve distributing a decryption key. There is no language in the cited passage that provides a motivation for modifying Pezzillo to transmit encrypted digital packets of information over the Internet. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. Instead, the Examiner is simply citing to a passage that allegedly teaches one of the missing limitations. Paper No. 5, page 11. This is not a motivation for modifying Pezzillo. The Examiner has not provided any objective evidence of there being a connection between the teaching of location identity based encryption (paragraph 119 of Glick) and modifying Pezzillo to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-24. *Id.*

Further, the Examiner cites page 523 of Schneier as support for his motivation which teaches conference key distribution and secret broadcasting. Page 523. There is no language in the cited passage that provides a motivation for modifying Pezzillo to transmit encrypted digital packets of information over the Internet. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. Instead, the Examiner is simply citing to a passage that allegedly teaches one of the missing limitations. Paper No. 5, page 11. This is not a motivation for modifying Pezzillo. The Examiner has not provided any objective evidence of there being a connection between the teaching of conference key distribution and secret broadcasting (paragraph 523 of Schneier) and modifying Pezzillo to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of

obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-24. *Id.*

B. Claims 5, 10 and 15 are patentable over Pezzillo in view of Glick in further view of Schneier and in further view of Kelly.

The Examiner has rejected claims 5, 10 and 15 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick in further view of Schneier and in further view of Kelly et al. (U.S. Publication No. 20030050015) (hereinafter "Kelly"). Paper No. 5, page 4. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo, Glick and Schneier with Kelly.

As stated above, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Pezzillo, Glick and Schneier do not teach transmitting a decryption key via electromagnetic waves within a defined distribution area of the broadcaster, as recited in claim 5 and similarly in claims 10 and 15. Paper No. 5, page 4. The Examiner states that Kelly teaches the use of electromagnetic waves (see paragraph 270). Paper No. 5, page 4. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 5, page 4. The Examiner's motivation for combining these references is that it "would have been to allow the use of RF or IR data communications". Paper

No. 5, page 5. The Examiner cites paragraph 270 of Kelly as support for his motivation. Paper No. 5, page 10. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner's motivation ("would have been to allow the use of RF or IR data communications") does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the above-cited missing claim limitation from claims 5, 10 and 15. According, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 5, 10 and 15. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Pezzillo addresses the problem of automatically controlling advertising inserts and associate ads with particular shows or program schedule rules (column 2, lines 58-60). The Examiner has not provided any reasons as to why one skilled in the art would modify Pezzillo, which teaches automatically controlling advertising inserts and associate ads with particular shows or program schedule rules, to transmit a decryption key via electromagnetic waves within a defined distribution area of the broadcaster (Examiner admits that Pezzillo does not teach this limitation). The Examiner's motivation ("would have been to allow the use of RF or IR data communications") does not provide such reasoning. That is, the Examiner's motivation does not provide reasons as to why one skilled in the art would modify a reference, whose purpose is to automatically control advertising inserts and associate ads with particular shows or program schedule rules, to transmit a decryption key via electromagnetic waves within a defined distribution area of the broadcaster. The Examiner must provide objective evidence in modifying Pezzillo to include the above-cited missing limitation of claims 5, 10 and 15. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness in rejecting claims 5, 10 and 15. *Id.* Consequently, the Examiner's motivation is

insufficient to support a *prima facie* case of obviousness for rejecting claims 5, 10 and 15. *Id.*

Further, as stated above, the Examiner cites to paragraph 270 of Kelly as support for his motivation for modifying Pezzillo to transmit a decryption key via electromagnetic waves within a defined distribution area of the broadcaster, as recited in claim 5 and similarly in claims 10 and 15. Paragraph 270 of Kelly teaches that transmission media can take the form of electromagnetic waves, such as those generating during radio frequency (RF) and infrared (IR) data communications. [0270]. The Examiner is simply citing to a passage that allegedly teaches the missing claim limitation. This does not provide a motivation for modifying Pezzillo to transmit a decryption key via electromagnetic waves within a defined distribution area of the broadcaster. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 5, 10 and 15. *Id.*

2. Claims 5, 10 and 15 are patentable over Pezzillo in view of Glick in further view of Schneier and in further view of Kelly.

Appellants respectfully assert that Pezzillo in view of Glick in further view of Schneier and in further view of Kelly, taken singly or in combination, do not teach or suggest "wherein said decryption key is transmitted via electromagnetic waves within said defined distribution area of said broadcaster" as recited in claim 5 and similarly in claims 10 and 15. The Examiner cites paragraph 270 of Kelly as teaching electromagnetic waves. Paper No. 5, page 4. The Examiner concludes that taken the references in combination teaches the above-cited claim limitation. Paper No. 5, page 4. Appellants respectfully traverse.

Pezzillo instead teaches a webcaster simulcasting the signal of a radio station that has certain restrictions on which programming it is allowed to carry on the Internet. Column 5, lines 61-63.

As stated above, Glick instead teaches that there are two pieces of requisite information for constructing the symmetric decryption, including a) the playback location known to the playback device, and b) the shape-parm parameter that is included with the encrypted digital information. [0119].

Schneier instead teaches broadcasting an encrypted message. Page 523.

Kelly instead teaches a medium that participates in providing instructions to a processor may take the form of transmission media which includes electromagnetic waves. [0270].

None of these references, taken singly or in combination, teach transmitting a decryption key via electromagnetic waves. Kelly teaches providing instructions to a processor via electromagnetic waves. Schneier teaches broadcasting an encrypted message. Glick does not teach transmitting a decrypting key but instead teaches transmitting a shape-parm parameter with the encrypted digital information. Hence, the references in combination do not teach transmitting a decryption key via electromagnetic waves. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 5, 10 and 15, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Neither do these references, taken singly or in combination, teach transmitting a decryption key via electromagnetic waves within a defined distribution area of a broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 5, 10 and 15, since the Examiner is relying upon an

incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

C. Claims 16, 18-19, 21-22 and 24 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick.

The Examiner has rejected claims 16, 18-19, 21-22 and 24 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick. Paper No. 5, page 5. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Claims 16, 19 and 22 are patentable over Pezzillo in view of Glick.

Appellants respectfully assert that Pezzillo and Glick, taken singly or in combination, do not teach or suggest "transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area" as recited in claim 16 and similarly in claims 19 and 22. The Examiner cites paragraphs 61, 119 and 121-122 of Glick as teaching the above-cited claim limitation. Paper No. 5, pages 5, 12. Appellants respectfully traverse.

Glick instead teaches accessing the location identity portion of the geolocked information. [0061]. Glick further teaches determining the location of the appliance accessing the digital information. [0061]. Glick further teaches that if the appliance location is consistent with the location identity, then access to the geolocked digital information is allowed. [0061]. Glick further teaches that location identity based encryption takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. Glick further teaches that there are two pieces of requisite information for constructing the symmetric decryption, including: a) the playback location known to the playback device, and b) the shape-parm pattern that is included with the encrypted digital information. [0119]. Glick further teaches that neither piece of information alone is sufficient to construct a decryption key. [0119]. Glick further teaches that the encryption is specific to a geographic area and the encryption algorithm need not

know anything about the user or device on which the decryption will occur. [0119]. Glick further teaches an exemplary application in which a customer orders digital film or audio through a vendor's catalog. [0121]. Glick further teaches that when a vendor fills the order, the location identity attribute associated with the customer is determined and used to generate an encryption key that is then used to encrypt the digital information file for the media. [0121]. Glick further teaches that the purchased media is then custom encrypted for the order, copied to a format such as DVD or CD-ROM, and packaged with a viewer that is also customized for the location identity attribute. [0121]. Glick further teaches that even if the entire contents of the purchased media are copied, the viewer and media, customized with the location identity attribute, prevent viewing except in the allowable region. [0121]. Glick further teaches that the appliance that receives the encrypted digital information can generate the geolocking key to decrypt the digital information based on the received shape parameter and the appliance location. Abstract. Glick further teaches that if the appliance location is not within the proximate area of the location identity attribute, the appliance will be unable to generate the geolocking key to decrypt the digital information. Abstract. Glick further teaches an exemplary application in which a location identity is used to 'narrowcast' information over public networks. [0122]. Glick further teaches that narrowcasting refers to the transmission of information to an audience at specific locations in contrast to point-to-point transmissions or a broadcast transmission to unrestricted locations. [0122].

Hence, Glick teaches transmitting information to an audience at specific locations over public networks. Glick further teaches encrypting a digital information file for media using a location identity attribute associated with the customer. However, Glick does not teach transmitting a broadcast over the Internet to a requester if the requester is physically located approximately within the defined distribution area. Instead, Glick teaches that encrypted digital information would still be transmitted even if the appliance is not located within a region defined by the location identity attribute. The appliance would just not be able to decrypt the

encrypted digital information if the appliance location is not within the proximate area of the location identity attribute. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 16, 19 and 22, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

2. Claims 18, 21 and 24 are patentable over Pezzillo in view of Glick for at least the reasons that claims 16, 19 and 22 are patentable over Pezzillo in view of Glick.

Claims 18, 21 and 24 depend from claims 16, 19 and 22, respectively, and therefore are patentable over Pezzillo in view of Glick for at least the reasons that claims 16, 19 and 22 are patentable over Pezzillo in view of Glick as stated above in Section C.1.

3. Claims 18, 21 and 24 are patentable over Pezzillo in view of Glick since Pezzillo and Glick.

Appellants respectfully assert that Pezzillo and Glick, taken singly or in combination, do not teach or suggest "wherein said broadcast is not transmitted over the Internet to said requester if said requester is physically located approximately outside said defined distribution area" as recited in claim 18 and similarly in claims 21 and 24. The Examiner cites paragraphs 61, 119 and 121-122 of Glick as teaching the above-cited claim limitation. Paper No. 5, pages 5, 12. Appellants respectfully traverse. As stated above, Glick teaches transmitting information to an audience at specific locations over public networks. Glick further teaches encrypting a digital information file for media using a location identity attribute associated with the customer. However, Glick does not teach not transmitting a broadcast over the Internet to a requester if the requester is physically located approximately outside the defined distribution area. Instead, Glick teaches that encrypted digital information would still be transmitted even if the appliance is not located within a region defined by the location identity attribute. The appliance would just not be able to decrypt the encrypted digital information if the appliance location is not within the proximate

area of the location identity attribute. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 18, 21 and 24, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

4. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo with Glick.

As stated above, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Pezzillo does not teach receiving a request to transmit a broadcast over the Internet from a requester; determining an approximate physical location of the requester; and transmitting the broadcast over the Internet to the requester if the requester is physically located approximately within the defined distribution area, as recited in claim 16 and similarly in claims 19 and 22. Paper No. 5, page 5. Further, the Examiner admits that Pezzillo does not teach not transmitting the broadcast over the Internet to the requester if the requester is physically located approximately outside the defined distribution area, as recited in claim 19 and similarly in claims 21 and 24. Paper No. 5, page 5. The Examiner asserts that Glick teaches these limitations. Paper No. 5, page 5. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 5, page 5. The Examiner's motivation for combining these references is that it "would have been to allow anyone in a defined geographic area to obtain the information (see paragraph 119)". Paper No. 5, page 6. The Examiner's motivation is

insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner's motivation ("would have been to allow anyone in a defined geographic area to obtain the information") does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the above-cited missing claim limitations from claims 16, 19, 21, 22 and 24. According, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 16, 18-19, 21-22 and 24. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Pezzillo addresses the problem of automatically controlling advertising inserts and associate ads with particular shows or program schedule rules (column 2, lines 58-60). The Examiner has not provided any reasons as to why one skilled in the art would modify Pezzillo, which teaches automatically controlling advertising inserts and associate ads with particular shows or program schedule rules, to include the above-cited claim limitations. The Examiner's motivation ("would have been to allow anyone in a defined geographic area to obtain the information") does not provide such reasoning. That is, the Examiner's motivation does not provide reasons as to why one skilled in the art would modify a reference, whose purpose is to automatically control advertising inserts and associate ads with particular shows or program schedule rules, to include the above-cited claim limitations. The Examiner must provide objective evidence in modifying Pezzillo to include the above-cited missing limitations of claims 16, 19, 21, 22 and 24. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness in rejecting claims 16, 18-19, 21-22 and 24. *Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 16, 18-19, 21-22 and 24. *Id.*

Further, as stated above, the Examiner cites to paragraph 119 of Glick as support for his motivation for modifying Pezzillo to include the above-cited claim limitations of claims 16, 19, 21, 22 and 24. Paragraph 199 of Glick teaches location identity based encryption which takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. There is no language in the cited passage that provides a motivation for modifying Pezzillo to transmit a broadcast over the Internet from a requester. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to determine an approximate physical location of the requester. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to transmit the broadcast over the Internet to the requester if the requester is physically located approximately within the defined distribution area. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to not transmit the broadcast over the Internet to the requester if the requester is physically located approximately outside the defined distribution area. The Examiner is simply citing to a passage that allegedly teaches the missing claim limitations. This does not provide a motivation for modifying Pezzillo to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 16, 18-19, 21-22 and 24. *Id.*

D. Claims 17, 20 and 23 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and in further view of Schlossberg.

The Examiner has rejected claims 17, 20 and 23 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and in further view of Schlossberg et al. (U.S. Publication No. 20020066034) (hereinafter "Schlossberg"). Paper No. 5,

page 6. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo and Glick with Schlossberg.

As stated above, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Pezzillo and Glick do not teach capturing an Internet Protocol of the requester; converting the captured Internet Protocol of the requester into a computer name; and performing a trace of the request, as recited in claim 17 and similarly in claims 20 and 23. Paper No. 5, page 6. The Examiner states that Schlossberg teaches the above-cited claim limitations. Paper No. 5, page 6. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 5, page 6. The Examiner's motivation for combining these references is that it "would have been to determine the physical location of a device on the Internet (see paragraph 54)". Paper No. 5, page 6. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner's motivation ("would have been to determine the physical location of a device on the Internet") does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Pezzillo to include the above-cited missing claim limitations from claims 17, 20 and 23. According, the Examiner has not presented a

prima facie case of obviousness for rejecting claims 17, 20 and 23. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

As stated above, Pezzillo addresses the problem of automatically controlling advertising inserts and associate ads with particular shows or program schedule rules (column 2, lines 58-60). The Examiner has not provided any reasons as to why one skilled in the art would modify Pezzillo, which teaches automatically controlling advertising inserts and associate ads with particular shows or program schedule rules, to capture an Internet Protocol of the requester; convert the captured Internet Protocol of the requester into a computer name; and perform a trace of the request. The Examiner's motivation ("would have been to determine the physical location of a device on the Internet") does not provide such reasoning. That is, the Examiner's motivation does not provide reasons as to why one skilled in the art would modify a reference, whose purpose is to automatically control advertising inserts and associate ads with particular shows or program schedule rules, to capture an Internet Protocol of the requester; convert the captured Internet Protocol of the requester into a computer name; and perform a trace of the request. The Examiner must provide objective evidence in modifying Pezzillo to include the above-cited missing limitations of claims 17, 20 and 23. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness in rejecting claims 17, 20 and 23. *Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *Id.*

Further, as stated above, the Examiner cites to paragraph 54 of Schlossberg as support for his motivation for modifying Pezzillo to include the above-cited claim limitations of claims 17, 20 and 23. Paragraph 54 of Schlossberg teaches that the primary function of the reconnaissance unit is to identify attackers and assist in determining their capabilities. [0054]. There is no language in the cited passage that provides a motivation for modifying Pezzillo to capture an Internet Protocol of the

requester. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to convert the captured Internet Protocol of the requester into a computer name. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to perform a trace of the request. The Examiner is simply citing to a passage that allegedly teaches the missing claim limitations. This does not provide a motivation for modifying Pezzillo to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *Id.*

Furthermore, the Examiner's motivation ("to determine the physical location of a device on the Internet") appears to have been gleaned from Appellants' disclosure (page 17 of Applicant's Specification). Any judgment on obviousness must not include knowledge gleaned only from applicant's disclosure. *In re McLaughlin*, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness in rejecting claims 17, 20 and 23 since it is merely the Examiner's subjective opinion. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

E. Claims 1-16, 18-19, 21-22 and 24 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over CNN in view of Schneier.

The Examiner rejects claims 1-16, 18-19, 21-22 and 24 under 35 U.S.C. §103(a) as being unpatentable over iCraveTV (CNN Story) (hereinafter "CNN") in view of Schneier. Paper No. 5, page 7. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying CNN with Schneier.

As stated above, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that CNN does not teach encrypting the digital packets of information; transmitting encrypted digital packets of information over the Internet and providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster, as recited in claim 1 and similarly in claims 6 and 11. Paper No. 5, page 7. The Examiner states that Schneier teaches the above-cited claim limitations. Paper No. 5, page 7. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 5, page 7. The Examiner's motivation for combining these references is that it "would have been to be able to share the decryption key with specific users (see page 523)". Paper No. 5, page 7. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

As stated above, the Examiner cites page 523 of Schneier as support for his motivation which teaches conference key distribution and secret broadcasting. Page 523. There is no language in the cited passage that provides a motivation for modifying CNN, an article that discusses some of the legal issues involved in broadcasting television channels over the Internet, to encrypt digital packets of information. Neither is there any language in the cited passage that provides a motivation for modifying CNN to transmit encrypted digital packets of information over the Internet. Neither is there any language in the cited passage that provides a motivation for modifying CNN to provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. The Examiner is

simply citing to a passage that allegedly teaches the missing claim limitations. This does not provide a motivation for modifying CNN to include the above-cited claim limitations. The Examiner has not provided any objective evidence of there being a connection between the teaching of conference key distribution and secret broadcasting (paragraph 523 of Schneier) and modifying CNN to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-15. *Id.*

Further, the Examiner's motivation ("would have been to be able to share the decryption key with specific users") does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify CNN to include the above-cited missing claim limitations from claims 1, 6 and 11. That is, the Examiner's motivation ("to be able to share the decryption key with specific users") does not address as to why one of ordinary skill in the art would modify CNN, which teaches broadcasting television channels over the Internet, to encrypt the digital packets of information; to transmit encrypted digital packets of information over the Internet and to provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. The Examiner must provide objective evidence of there being a motivation to modify CNN as such. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Since the Examiner is relying upon his own subjective opinion, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 1-15. *Id.*

2. CNN and Schneier, taken singly or in combination, do not teach or suggest claim limitations of claims 1, 6 and 11.

Appellants respectfully assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "providing a decryption key to a transmitter to

be broadcasted within said defined distribution area of said broadcaster" as recited in claim 1 and similarly in claims 6 and 11. The Examiner cites page 523 of Schneier as teaching the above-cited claim limitation. Paper No. 5, page 7. Appellants respectfully traverse.

CNN instead teaches broadcasting a television channel over the Internet.

Schneier instead teaches broadcasting an encrypted message. Page 523.

None of these references, taken singly or in combination, teach providing a decryption key to a transmitter. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Neither do any of these references, taken singly or in combination, teach providing a decryption key to a transmitter to be broadcasted within a defined distribution area of the broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

In response to Appellants' above arguments, the Examiner states:

> CNN teaches transmitting information to clients, who are only within a certain physical location (blackout) (see page 1), and Schneier teaches broadcasting a key (see page 523), therefore the combination teaches transmitting and receiving a decryption key. Paper No. 5, pages 12-13.

Appellants respectfully traverse the assertion that CNN teaches transmitting information to clients that are within a certain physical location. Instead, CNN teaches the complete opposite. Page 2. CNN teaches that iCraveTV was broadcasting 17 channels over the website and that the NFL promised to take legal

action against iCraveTV if iCraveTV violated the NFL's blackout rule (NFL bars the transmission of its games within some local markets). Pages 1-2. There is no language that suggests that iCraveTV was not broadcasting games within local markets. Instead, CNN teaches the opposite. iCraveTV broadcasts the channels over the web where anyone in the world would have access to view such broadcasts. This is the reason why the NFL threatened to sue iCraveTV.

Further, Schneier teaches broadcasting an encrypted message and all of the encrypted keys. Page 523. There is no language that Schneier teaches broadcasting a decryption key as suggested by the Examiner.

As stated above, CNN and Schneier, taken singly or in combination, do not teach providing a decryption key to a transmitter. Neither do any of these references, taken singly or in combination, teach providing a decryption key to a transmitter to be broadcasted within a defined distribution area of the broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

3. Claims 2-5, 7-10 and 12-15 are patentable over CNN in view of Schneier for at the reasons stated in Section E.2.

Claims 2-5 depend from claim 1 and hence are patentable over CNN in view of Schneier for at least the reasons that claim 1 is patentable over CNN in view of Schneier as discussed in Section E.2. Claims 7-10 depend from claim 6 and hence are patentable over CNN in view of Schneier for at least the reasons that claim 6 is patentable over CNN in view of Schneier as discussed in Section E.2. Claims 12-15 depend from claim 11 and hence are patentable over CNN in view of Schneier for at least the reasons that claim 11 is patentable over CNN in view of Schneier as discussed in Section E.2.

4. Claims 2, 7 and 12 are patentable over CNN and in view of Schneier.

Appellants respectfully assert that CNN in view of Schneier, taken singly or in combination, do not teach or suggest "receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster" as recited in claim 2 and similarly in claims 7 and 12. The Examiner cites page 523 of Schneier as teaching the above-cited claim limitation. Paper No. 5, page 7 Appellants respectfully traverse.

Schneier instead teaches broadcasting an encrypted message. Page 523.

There is no language in Schneier that teaches receiving a decryption key by users of computer systems. Neither is there any language in Schneier that teaches receiving a decryption key by users of computer systems located approximately within a defined distribution area. Neither is there any language in Schneier that teaches receiving a decryption key by users of computer systems located approximately within a defined distribution area of a broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 7 and 12, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

5. Claims 4, 9 and 14 are patentable over CNN in view of Schneier.

Appellants respectfully assert that CNN in view of Schneier, taken singly or in combination, do not teach or suggest "reproducing said decrypted digital broadcast by an audio transducer" as recited in claim 4 and similarly in claims 9 and 14. The Examiner takes Official Notice that it would have been obvious to a person of ordinary skill in the art to use an audio transducer to reproduce the digital broadcast. Paper No. 5, page 8. The Examiner's motivation is to allow the receiver to hear the audio of the digital broadcasted TV. Paper No. 5, page 8.

Appellants respectfully traverse the implied assertion that it would have been obvious to one of ordinary skill in the art to modify CNN in view of Schneier to reproduce a decrypted digital broadcast by an audio transducer. Appellants respectfully request the Examiner to provide a reference that teaches reproducing a decrypted digital broadcast by an audio transducer pursuant to M.P.E.P. §2144.03. Furthermore, the Examiner is reminded that in order to establish a *prima facie* case of obviousness the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner states "to allow the receiver to hear the audio of the digital broadcasted TV" as motivation. However, the Examiner has not provided any evidence that his motivation comes from any of the sources listed above. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 4, 9 and 14. *Id.*

In response to Appellants' request to the Examiner to provide a reference that teaches reproducing a decrypted digital broadcast by an audio transducer, the Examiner has provided a reference that teaches a transducer. Paper No. 5, page 13. However, a transducer does not show reproducing a decrypted digital broadcast by an audio transducer. Appellants were contesting that it is well known in the art to reproduce a decrypted digital broadcast by an audio transducer. Appellants were not contesting that an audio transducer is well known in the art. Accordingly, claims 4, 9 and 14 are patentable over CNN in view of Schneier. M.P.E.P. §2143.

6. Claims 16, 19 and 22 are patentable over CNN in view of Schneier.

Appellants respectfully assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "receiving a request to transmit said broadcast from a requester" as recited in claim 16 and similarly in claims 19 and 22. The Examiner simply asserts that the combination of CNN and Schneier teach the above-cited claim limitation without citing to any page or passage in either reference. Paper No. 5, page 8. Appellants respectfully traverse the assertion that CNN and Schneier taken together teach the above-cited claim limitation.

CNN instead teaches broadcasting television channels over the Internet. Schneier instead teaches transmitting an encrypted message. There is no language in either reference (or in combination) that teaches receiving a request to transmit a broadcast. Neither is there any language in either reference (or in combination) that teaches receiving a request to transmit a broadcast from a requester. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 16, 19 and 22, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Appellants further assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "determining an approximate physical location of said requester" as recited in claim 16 and similarly in claims 19 and 22. The Examiner asserts that this limitation is inherent in CNN. Paper No. 5, page 8. Appellants respectfully traverse.

Appellants respectfully traverse the assertion that CNN inherently teaches determining an approximate physical location of a requester. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that CNN inherently teaches determining an approximate physical location of a requester. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must make clear that CNN inherently teaches determining an approximate physical location of a requester, and that it would be so recognized by persons of

ordinary skill. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Inherency, however, may not be established by probabilities or possibilities. *Id.* The mere fact that a certain thing may resolve from a given set of circumstances is not sufficient. *Id.* Therefore, the Examiner must support the inherency argument with objective evidence meeting the above requirements. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 16-24. M.P.E.P. §2143.

In response to Appellants' above argument, the Examiner appears to be arguing that CNN must inherently teach determining an approximate physical location of a requester since CNN performs a blackout (the stopping of local broadcasts to ensure ticket sales to the sporting event). Paper No. 5, page 13. Appellants respectfully traverse the assertion that CNN performs a blackout. As stated above, CNN teaches the complete opposite. Page 2. CNN teaches that iCraveTV was broadcasting 17 channels over the website and that the NFL promised to take legal action against iCraveTV if iCraveTV violated the NFL's blackout rule (NFL bars the transmission of its games within some local markets). Pages 1-2. There is no language that suggests that iCraveTV was not broadcasting games within local markets. Instead, CNN teaches the opposite. iCraveTV broadcasts the channels over the web where anyone in the world would have access to view such broadcasts. This is the reason why the NFL threatened to sue iCraveTV. Hence, CNN does not inherently teach determining an approximate physical location of a requester. Therefore, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 16-24. M.P.E.P. §2143.

Appellants further assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area" as recited in claim 16 and similarly in claims 19 and 22. The Examiner simply asserts that the combination of CNN and Schneier teach the

above-cited claim limitation without citing to any page or passage in either reference. Paper No. 5, page 8. Appellants respectfully traverse the assertion that CNN and Schneier taken together teach the above-cited claim limitation.

CNN instead teaches broadcasting television channels over the Internet. Schneier instead teaches transmitting an encrypted message. There is no language in either reference (or in combination) that teaches transmitting a broadcast over the Internet to a requester if the requester is physically located approximately within a defined distribution area. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 16, 19 and 22, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

7. Claims 18, 21 and 24 are patentable over CNN in view of Schneier for at least the reasons that claims 16, 19 and 22 are patentable over CNN in view of Schneier.

Claims 18, 21 and 24 depend from claims 16, 19 and 22, respectively, and therefore are patentable over CNN in view of Schneier for at least the reasons that claims 16, 19 and 22 are patentable over CNN in view of Schneier as stated above in Section E.6.

8. Claims 18, 21 and 24 are patentable over CNN in view of Schneier.

Appellants respectfully assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "wherein said broadcast is not transmitted over the Internet to said requester if said requester is physically located approximately outside said defined distribution area" as recited in claim 18 and similarly in claims 21 and 24. The Examiner simply asserts that the combination of CNN and Schneier teach the above-cited claim limitation without citing to any page or passage in either reference. Paper No. 5, page 8. Appellants respectfully traverse the assertion that CNN and Schneier taken together teach the above-cited claim limitation.

CNN instead teaches broadcasting television channels over the Internet. Schneier instead teaches transmitting an encrypted message. There is no language in either reference (or in combination) that teaches not transmitting a broadcast over the Internet to a requester if the requester is physically located approximately outside a defined distribution area. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 18, 21 and 24, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

9. The Examiner has not provided a source of motivation or appropriate motivation for modifying CNN with Schneier to include the limitations of claims 16, 18-19, 21-22 and 24.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner has not provided any motivation for modifying CNN with Schneier to include the lacking limitations (Examiner has not specifically identified the limitations in claims 16, 18-19, 21-22 and 24 that are not taught by CNN) recited in claims 16, 18-19, 21-22 and 24. Accordingly, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 16, 18-19, 21-22 and 24. M.P.E.P. §2143.

In response to Appellants' above argument, the Examiner simply states that "the motivation is to only allow the certain users to have the key." Paper No. 5, page 13. Appellants have not specifically identified which elements are not taught by CNN and whether CNN is modified with Schneier to include these elements for the motivation stated on Paper No. 5, page 13. The Examiner's motivation ("the motivation is to only allow the certain users to have the key") does not provide

reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify CNN to include the missing claim limitations from claims 16, 18-19, 21-22 and 24. The Examiner must provide objective evidence of there being a motivation to modify CNN as such. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Since the Examiner is relying upon his own subjective opinion, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 16, 18-19, 21-22 and 24. *Id.*

Furthermore, the Examiner has not provided a source for his motivation for modifying CNN with Schneier to include the missing limitations of claims 16, 18-19, 21-22 and 24. The Examiner simply states "the motivation is to only allow the certain users to have the key" as motivation for modifying CNN with Schneier to include the missing limitations of claims 16, 18-19, 21-22 and 24. The motivation to modify CNN must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-48 (Fed. Cir. 1998). The Examiner has not provided any evidence that his motivation comes from any of these sources. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claim 16, 18-19, 21-22 and 24. *Id.*

F. Claims 17, 20 and 23 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over CNN in view of Schneier and in further view of Schlossberg.

The Examiner has rejected claims 17, 20 and 23 under 35 U.S.C. §103(a) as being unpatentable over CNN in view of Schneier and in further view of Schlossberg et al. (U.S. Publication No. 20020066034) (hereinafter "Schlossberg"). Paper No. 5,

page 8. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying CNN and Schneier with Schlossberg.

As stated above, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that CNN and Schneier do not teach capturing an Internet Protocol of the requester; converting the captured Internet Protocol of the requester into a computer name; and performing a trace of the request, as recited in claim 17 and similarly in claims 20 and 23. Paper No. 5, pages 8-9. The Examiner states that Schlossberg teaches the above-cited claim limitations. Paper No. 5, page 9. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 5, page 9. The Examiner's motivation for combining these references is that it "would have been to determine the physical location of a device on the Internet (see paragraph 54)". Paper No. 5, pages 9 and 14. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner's motivation ("would have been to determine the physical location of a device on the Internet") does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify CNN to include the above-cited missing claim limitations from claims 17, 20 and 23. According, the Examiner has not presented a

prima facie case of obviousness for rejecting claims 17, 20 and 23. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

As stated above, CNN teaches a website called iCraveTV.com streaming 17 channels over the Internet. The Examiner has not provided any reasons as to why one skilled in the art would modify CNN, which teaches a website called iCraveTV.com streaming 17 channels over the Internet, to capture an Internet Protocol of the requester; convert the captured Internet Protocol of the requester into a computer name; and perform a trace of the request. The Examiner's motivation ("would have been to determine the physical location of a device on the Internet") does not provide such reasoning. That is, the Examiner's motivation does not provide reasons as to why one skilled in the art would modify a reference (whose purpose is to inform the public about a website called iCraveTV.com that will most likely be sued by the major broadcasters) to capture an Internet Protocol of the requester; convert the captured Internet Protocol of the requester into a computer name; and perform a trace of the request. The Examiner must provide objective evidence in modifying Pezzillo to include the above-cited missing limitations of claims 17, 20 and 23. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness in rejecting claims 17, 20 and 23. *Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *Id.*

Further, as stated above, the Examiner cites to paragraph 54 of Schlossberg as support for his motivation for modifying CNN to include the above-cited claim limitations of claims 17, 20 and 23. Paragraph 54 of Schlossberg teaches that the primary function of the reconnaissance unit is to identify attackers and assist in determining their capabilities. [0054]. There is no language in the cited passage that provides a motivation for modifying CNN to capture an Internet Protocol of the requester. Neither is there any language in the cited passage that provides a

motivation for modifying CNN to convert the captured Internet Protocol of the requester into a computer name. Neither is there any language in the cited passage that provides a motivation for modifying CNN to perform a trace of the request. The Examiner is simply citing to a passage that allegedly teaches the missing claim limitations. This does not provide a motivation for modifying CNN to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *Id.*

Furthermore, the Examiner's motivation ("to determine the physical location of a device on the Internet") appears to have been gleaned from Appellants' disclosure (page 17 of Applicant's Specification). Any judgment on obviousness must not include knowledge gleaned only from applicant's disclosure. *In re McLaughlin*, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness in rejecting claims 17, 20 and 23 since it is merely the Examiner's subjective opinion. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

VIII. CONCLUSION

For the reasons noted above, the rejections of claims 1-24 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-24.

Respectfully submitted,
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CLAIMS APPENDIX

1. A method for transmitting a broadcast over the Internet by a broadcaster where the broadcast is interpreted by users located approximately within a defined distribution area of the broadcaster, comprising the steps of:

encoding a radio broadcast into digital packets of information;

encrypting said digital packets of information;

transmitting said encrypted digital packets of information over the Internet; and

providing a decryption key to a transmitter to be broadcasted within said defined distribution area of said broadcaster.

2. The method as recited in claim 1 further comprising the step of:

receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster.

3. The method as recited in claim 2 further comprising the step of:

decrypting said encrypted digital packets of information using said decryption key.

4. The method as recited in claim 3 further comprising the step of:

reproducing said decrypted digital broadcast by an audio transducer.

5. The method as recited in claim 1, wherein said decryption key is transmitted via electromagnetic waves within said defined distribution area of said broadcaster.

6. A computer program product embodied in a machine readable medium for transmitting a broadcast over the Internet by a broadcaster where the broadcast is interpreted by users located approximately within a defined distribution area of the

broadcaster comprising the programming steps of:

encoding a radio broadcast into digital packets of information;

encrypting said digital packets of information;

transmitting said encrypted digital packets of information over the Internet; and

providing a decryption key to a transmitter to be broadcasted within said defined distribution area of said broadcaster.

7. The computer program product as recited in claim 6 further comprises the programming step of:

receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster.

8. The computer program product as recited in claim 7 further comprises the programming step of:

decrypting said encrypted digital packets of information using said decryption key.

9. The computer program product as recited in claim 8 further comprises the programming step of:

reproducing said decrypted digital broadcast by an audio transducer.

10. The computer program product as recited in claim 6, wherein said decryption key is transmitted via electromagnetic waves within said defined distribution area of said broadcaster.

11. A system, comprising:

a server broadcaster configured to transmit a broadcast over the Internet, wherein said server broadcaster comprises:

a processor; and

a memory unit coupled to said processor, wherein said memory unit is operable for storing a computer program operable for transmitting a broadcast over the Internet, wherein said broadcast is interpreted by users located approximately within a defined distribution area of said server broadcaster, wherein the computer program is operable for performing the following programming steps:

encoding a radio broadcast into digital packets of information;

encrypting said digital packets of information; and

transmitting said encrypted digital packets of information over the Internet; and

providing a decryption key to a transmitter to be broadcasted via radio frequencies within said defined distribution area of said server broadcaster.

12. The system as recited in claim 11 further comprising:

one or more computer systems coupled to said server broadcaster, wherein one or more of said one or more computer systems are located approximately within said defined distribution area of said server broadcaster, wherein each of said one or more computer systems located approximately within said defined distribution area of said server broadcaster comprises:

a processor; and

a memory unit coupled to said processor, wherein said memory unit is operable for storing a computer program, wherein the computer program is operable for performing the following programming step:

receiving said decryption key.

13. The system as recited in claim 12, wherein the computer program in each of said one or more computer systems located approximately within said defined distribution area of said server broadcaster is further operable for performing the following programming step:

decrypting said encrypted digital packets of information using said decryption key.

14. The system as recited in claim 13, wherein the computer program in each of said one or more computer systems located approximately within said defined distribution area of said server broadcaster is further operable for performing the following programming step:

reproducing said decrypted digital broadcast by an audio transducer.

15. The system as recited in claim 11, wherein said decryption key is transmitted via electromagnetic waves within said defined distribution area of said server broadcaster.

16. A method for transmitting a broadcast over the Internet within a defined distribution area, comprising the steps of:

receiving a request to transmit said broadcast from a requester;

determining an approximate physical location of said requester; and

transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area.

17. The method as recited in claim 16, wherein said step of determining said approximate physical location of said requester comprises the steps of:

capturing an Internet Protocol of said requester;

converting said captured Internet Protocol of said requester into a computer name; and

performing a trace of said request.

18. The method as recited in claim 16, wherein said broadcast is not transmitted over the Internet to said requester if said requester is physically located approximately

outside said defined distribution area.

19. A computer program product embodied in a machine readable medium for transmitting a broadcast over the Internet within a defined distribution area comprising the programming steps of:

receiving a request to transmit said broadcast from a requester;

determining an approximate physical location of said requester; and

transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area.

20. The computer program product as recited in claim 19, wherein said programming step of determining said approximate physical location of said requester comprises the programming steps of:

capturing an Internet Protocol of said requester;

converting said captured Internet Protocol of said requester into a computer name; and

performing a trace of said request.

21. The computer program product as recited in claim 19, wherein said broadcast is not transmitted over the Internet to said requester if said requester is physically located approximately outside said defined distribution area.

22. A system, comprising:

a processor; and

a memory unit coupled to said processor, wherein said memory unit is operable for storing a computer program operable for transmitting a broadcast over the Internet within a defined distribution area, wherein the computer program is operable for performing the following programming steps:

receiving a request to transmit said broadcast from a requester;

determining an approximate physical location of said requester; and

transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area.

23. The system as recited in claim 22, wherein said programming step of determining said approximate physical location of said requester comprises the programming steps of:

capturing an Internet Protocol of said requester;

converting said captured Internet Protocol of said requester into a computer name; and

performing a trace of said request.

24. The system as recited in claim 22, wherein said broadcast is not transmitted over the Internet to said requester if said requester is physically located approximately outside said defined distribution area.

EVIDENCE APPENDIX

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellants in the Appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings to the current proceeding.